



STAFF REPORT

Discussion and Direction on Establishing an Administrative Hearing Process for Code Enforcement

Honorable Mayor and Council Members

Summary

On December 28, 2004, Council directed staff to review various procedures for achieving faster compliance for code enforcement issues. Staff conducted studies of other cities code enforcement processes to determine which would allow the City to achieve compliance in the most expeditious manner with the greatest fiscal benefit to the City.

During the study, it was determined that cities throughout California have established or are in the process of establishing an “Administrative Enforcement Program”. This program allows local governments greater control over enforcement adjudication procedures to gain compliance when its ordinances are being violated. There can also be a fiscal benefit by reducing the amount time spent by Attorneys adjudicating the case in the Court.

The purpose of this memo is present the more common elements of the administrative hearing process, identify the more specific operational issues raised by internalizing the code enforcement process and obtain Council direction on certain options. No public hearing is required.

Background

Over the past several years, the City has sought to clarify its enforcement policy, with its most deliberate effort occurring in November 2001. At that time, the Council adopted Resolution No. 9113 establishing its first formal policy for code enforcement. That resolution set forth an approach based on the following principles: Seek compliance rather than impose punishment, focus on the violation rather than the violator or complainant, provide flexibility for special needs (old age or infirmity) and give health and safety problems the highest priority.

Recently there have been concerns raised by various City groups (City Council, Planning Commission and Neighborhood Associations) attempting to expedite the compliance process and allow greater City control over its enforcement abatement processes. In order to address these

concerns, Council has asked staff to provide alternative enforcement options.

In order to learn about alternative enforcement options available to the City, staff conducted surveys of other agencies and their process to achieve compliance. The results of these surveys showed that many cities on the Peninsula and throughout the State have enacted or are in the process of developing their own code enforcement process. To learn more about how an administrative process works, staff conducted a “round table discussion” with various agencies from the Peninsula, which allowed Belmont’s staff the opportunity to learn from the experiences of different cities. The round table was held on May 10, 2005. Representatives attended from Belmont, Daly City, East Palo Alto, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, San Bruno and Sunnyvale.

The topics that were discussed at the roundtable included:

- Legal aspects of Administrative Hearing Programs
- Agencies programs and the various processes that are used to achieve compliance
- Fines and penalties, how they are levied and collected
- Staffing of Hearing Board and how members are selected
- Authority of Hearing Boards, decisions, fines, and enforcement

Discussion

Government Code Section 53069.4 states that “ The legislative body of a local agency, as defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty”. This is the basic authority for Belmont to create its own code enforcement process. In order for Belmont to establish and enforce an administrative fine or penalty, the City must set forth by ordinance the administrative procedures that governs the imposition, enforcement, collection, and administrative review by the local agency of those fines or penalties.

Many cities throughout the State have developed programs called the “Formal Hearing Process”, “Administrative Hearing Process”, or “Administrative Process”. Although all are named differently, the idea of the programs are the same in using an in-house program to administer a citation process, fine violators, and conduct adjudication hearings for violations of the agencies laws. The basic functions of these processes include:

- Conduct inspection of alleged violations
- Notification of violations
- Re-inspections to confirm if violation has been abated or still exist
- Apply fines or penalties
- Conduct hearings for appeals
- Administer Hearing Board decisions
- Collect fines and penalties

Although the basic steps for administering the “Administrative Process” are the same, each city has tailored their process to fit the needs and philosophy of their community. The following are some of the ‘variables’ that Belmont needs to consider in developing its own program:

➤ **Time element to correct violations**

- The time elements depend on the seriousness of the violation. The average times are three days for serious health and safety violations to 30 days for larger blighted situations. Staff believes that flexibility is still useful on this subject to account for unique and case-by-case circumstances, such as the age / infirmity of the property owner, the extent of the violation and the owner's demonstrated efforts to abate the problem.

➤ **Number of notices before fines or penalties are levied**

- Some agencies start to apply fees once a violation is determined to exist. The fee is raised with each subsequent notice. Daly City is one example of this policy. Hillsborough and South San Francisco will begin to levy fines after two notices. Other agencies only levy fines when approved by the Administrative Hearing Board and at the recommendation of staff. The general policy is for "Administrative Citations" included with the notices or mailed individually to the property owner advising them of the violations and penalties that are being levied.
- Options that are available include:
 - Levy fine after 1st notice and the violation is not corrected in a specific time period
 - Levy fine after 2 notices and the violations is not corrected
 - Refer case to Hearing Board who has the ability to levy fines against a violator with the recommendation of staff

➤ **Amount of fines or penalties**

- The fines and penalties can vary between agency to agency. Some agencies are on a total cost recovery imposing penalties for their full cost of enforcement of specific violations while other agencies impose a small penalty as a deterrent to future violations.
- The Council need not identify its preferences at this time. Staff will develop a fine schedule for approval at a later date.

➤ **Appeal process of cases**

- Agencies allow between 10 and 30 days to appeal a fine or notice of violation. The local Hearing Board hears this appeal. By state law, agencies must allow for 20 days after service of the final administration of an order by the Hearing Board to appeal the decision to the Superior Court.
- There are agencies throughout the State that allow for a "request for a preliminary review". The preliminary review is an informal review conducted by a senior management member prior to an appeal to the Hearing Board.

➤ **How the Hearing Board is staffed**

- Each City has developed their own criteria for staffing the Hearing Board. Some Cities have contracted with attorneys to hear the cases, other cities have a Hearing Board that consist of Senior Management Team members while others have selected private citizens to hear the cases.
- Each City must take into account the potential effects of each option.

Basically, the question is, “What type of membership will provide the greatest assurance of objectivity?” There are various legal implications to using City staff, paid professionals, or private citizens for the Hearing Board. Citizens still have the right to appeal to the Superior Court if they feel that they were denied due process.

- The options for staffing the Hearing Board include:
 - Contracting with Outside attorneys
 - Senior Management Team member
 - Citizen Hearing Board appointed from community members
 - Administrative Law Judge
 - City Council or other City Commission
- **Enforcing the Hearing Boards ruling**
 - Enforcing the Hearing Board’s ruling is one of the most difficult aspects of the Hearing Process. The staff time required to prepare the “findings and orders”, conduct follow-up inspections for compliance, process the penalties and fees for collection, and conduct “summary abatements” ordered by the Hearing Board can be very time consuming. This may require additional personnel to ensure the procedures are being diligently pursued while continuing to respond to new reports of violations. The Hearing Board’s authority over fines and penalties must be determined, as well. Any ability to lower fines / penalties will reduce revenues to the City.
- **Appeals of Hearing Boards decisions**
 - The Hearing Board’s decision is subject to appeal, as State law allows all decisions of the Hearing Board to be appealed to the Superior Court. (Defendants have 20 days after the ruling to file the appeal. When the appeal is filed, the city is required to turn over all of its files for the Courts to review. No action can be taken against the defendant while the case is under appeal.) The Council may wish to consider if it wants to be an appeal body with the City’s own process – above the Hearing Board – before the Courts are used. This provides a stronger administrative record, but also adds additional costs to the local process (an appeal fee could be charged.)
 - Options for allowing appeals include:
 - The Hearing Board’s decision is final
 - The Council may receive and act on appeals of the Hearing Board’s decision.
- **Collecting fines and penalties**
 - Once fines or penalties have been levied, cities have a few options to collect those fines. The first is to file a lien on the parcel. The agency will collect the fine or penalty when the property taxes are paid. This also “clouds” the title in the event that the owner wants to sell the property. Another option is to turn over the collection to a collection agency. This is an aggressive approach, yet may result in the agency not collecting the full fine amount as the collection agency keeps a portion of the fine as their fee. Another option is to keep the collection process “in-house” with

the Finance Department working with the property owner to collect the fees.

- The most popular options used by other cities include
 - Liens on property
 - Referring matter to outside collection agency
 - Keeping the collection process in-house
- **Gaining compliance from the property owner**
 - The main goal of the program is to achieve compliance and remove any violations from the property. Separate from collecting fines for confirmed violations, the agency must still have the resources to remove the violation after the Hearing Board renders their decision. Most agencies allow for "Summary Abatement" of the property after judgment is rendered. This is done after the owner has been given ample time to correct the violations after the Hearing Boards decision.
 - Summary Abatement in the process that is used in a few cities to remove any violations as ordered by the Hearing Board. The Hearing Board orders the violator to remove specific violations in a specified time period. If the owner does not remove the violation in the time period as directed by the Hearing Board, the City will take whatever steps are necessary to remove the violation and bill the property owner. A fee to cover the cost of the abatement action is assessed over and above any fines already levied against the owner. This process is used sparingly and must be carefully monitored due to legal ramifications.

Sample Process – Daly City

Bringing all of these options into a workable and effective program is not easy. From the May workshop, staff observed that the City of Daly City has an interesting and potentially useful approach. Daly City charges an "Assessment Fee" for code enforcement violations. This fee is separate from the fines associated with code enforcement cases as it is levied upon the confirmation of the violations. This fee is determined by the cost of the average amount of staff time that is needed to rectify specific violations. The fee is doubled in 30 days and if not corrected in a 120 day time period, they charge four times the original amount. If the case is taken to the Administrative Hearing Board for failure to abate any violations, an additional charge of \$700 is applied.

The process begins when a notice is mailed to the property owner advising them that there has been a report of a possible violation on their property. The notice states that staff will conduct an inspection of the property on a specific date. If the violation is confirmed, then the Assessment Fee is levied and notice is mailed advising the owner of the violation and the fee. Further enforcement actions can result in an appearance before the Hearing Board, where additional fines can be imposed. All fees and fines can be appealed through the normal appeal process as established the City.

Public Contact

Staff attended the Neighborhood Association Presidents Luncheon on May 26, 2005 to explain the Administrative Process. No other public contact other than the meeting notification postings have been conducted.

Financial Impact

Additional expenses would result from the adoption of a City-run administrative process; however, a matching fee schedule could defray a portion of these additional costs. If the council directs the adoption of higher fees, increased revenues could occur. However, as noted above, there are costs associated with any effort to collect fines and fees, and the experiences of other cities is a reminder that total cost recovery is rarely, if ever, achieved by an administrative process. There may be the need for additional staff to coordinate the hearings, send notices for collection of fines, prepare findings or decisions of the Hearing Board, monitor the abatement process, etc. At this time, it is unknown how much, if any additional staff may be needed. There are also additional costs for the staffing of the Hearing Board. All these fiscal implications are dependant on the direction that Council takes regarding the development of the program.

Recommendation:

Staff is proceeding with the development of an Administrative Process for Belmont. At this time, staff will need guidance from Council on the following matters:

- When to begin levying fines against violators
 - After 1st notice
 - After 2nd notice
 - After Hearing Board decision and fine is stated in judgment
- How is the Hearing Board staffed
 - Established City Commission
 - Senior Management Team members
 - Independent third party (Retired attorney or judge)
 - Other members of the Community
 - A combination of some of the above
- The Hearing Board's authority over fines or penalties
 - May reduce fines / penalties (will reduce revenues)
 - May not reduce fines / penalties
- The possibility of appeal to the Council
 - The Hearing Board's decision is final (subject to court appeal)
 - Council will hear appeals of Hearing Board decisions
- How to collect any fines and penalties that are levied
 - Apply lien on property
 - Outside collection agency
 - Finance Department attempting collection
- Should an Assessment Fee be applied once staff begins enforcement proceedings
 - This is a fee that is separate from any fines that may be applied
 - This fee is applied once staff begins abatement proceedings

Attachments:

Spreadsheet containing information regarding procedural processes from other agencies.

Respectfully submitted,

Kirk Buckman
Code Enforcement
Officer

Craig Ewing
Planning and Community
Development Dir., AICP

Jack Crist
Interim City Manager